IN THE HIGH COURT OF JUDICATUERE OF RAJASTHAN
AT JODHPUR.

MITHU SINGH Vs. STATE OF RAJASTHAN & ORS.

"D.B. CIVIL SPECIAL APPEAL [WRIT] NO.316/2005 AGAINST THE JUDGMENT PASSED ON 26.05.2005 BY THE LEARNED SINGLE JUDGE IN S.B. CIVIL WRIT PETITION NO.1738/1998."

DATE OF JUDGMENT : 12th FEBRUARY 2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.Sangeet Lodha}
Mr.Viveek Shrimali} for appellant.
Mr.L.R.Upadhyay P.P.
Mr.P.P.Choudhary for the respondents.

*****

BY THE COURT:

Heard learned counsel for the parties.

The principal issue raised in this appeal is about the correctness and effectiveness of the Inquiry Report submitted before the learned Single Judge as Exhibit R-1/13.

The context of the controversy is that respondent No.4 had filed a writ petition, who had been unsuccessful in getting an appointment as Teacher in Physical Education Gr.III in

pursuance of Advertisement issued in the Month of April, 1997 inviting applications from eligible candidates. He had, in the process, alleged that respondent No.3 Ranjeet Singh and respondent No.4 Mithu Singh S/o Sh.Chandan Singh (the appellant) had wrongly been included in the list of successful candidates inter alia on the ground that Ranjeet Singh has been granted 10 marks for his domicile and Mithu Singh has been incorrectly awarded bonus marks for participating in District Level Sports Competition. The challenge to appointment of respondent No. 3 was withdrawn by the petitioner so far as present writ petition is concerned.

The appellant as non-petitioner No.4 in the writ petition has submitted photocopy of the certificate issued by Education Department regarding his participation at the State Level competition held at Udaipur during 3rd September to 6th September 1983 in the Education Session 1983-84. Annexure R-4/1 is placed on record as photocopy of the certificate issued in favour of respondent No.4 (present appellant) for showing his participation in Kabbadi and at the back of the certificate an endorsement has been made by the Teacher of the School where the petitioner was studying namely Government Secondary School, Chhapli certifying that he had participated as member of the School Team in the

competition to which the certificate related. The endorsement of the School Teacher was duly attested by Head Master of said Government School Chhapli [Rajsamand].

The State Government in its Education Department has given a reply in the first instance to this aspect of the matter that information received from the Head Master Government Upper Primary School Chhapli is that as per the office record available, Shri Mithu Singh has not participated in the District Level Sports Competition and the respondents No.1 and 2 are making further inquiry regarding the certificate submitted by Shri Mithu Singh and if the certificate of Mithu Singh will be found forged he will be removed from the service and action will be taken against him as per law.

Thereafter, an additional affidavit was submitted by the Officer Incharge on behalf of respondents No.1 and 2 dated 06.05.2003 stating therein that the relevant documents produced by the respondents No.3 and 4 at the time of inviting application has since been verified from their original and these documents were found true and correct. Thereafter only the respondent No. 3 Ranjeet Singh was given appointment. On 06.09.2001 and appointment of respondent No.4 Mithu Singh was confirmed because he had already been appointed

on 25.03.1998.

It appears that thereafter another additional reply has also been submitted on 21.11.2003 regarding respondent No.4 Mithu Singh.

Following averments were made in reply to para 9 and 10 of the writ petition.

> "Para 9 and 10 of the writ petition are denied. It is wrong to state that no action was taken. The appointment of Shri Ranjeet Singh was stopped vide order dated 25.03.1998 and a detailed inquiry is still pending against him. The merit list has come to an end on 31.03.1998 hence petitioner is not entitled to appointment."

In reply to Para 11 of the writ it was submitted that against respondent No.4 Mithu Singh an inquiry is pending and if his certificate will be found forged, an appropriate action will be taken against him.

It is further submitted in Para 12 that if Ranjeet Singh and Mithu Singh are removed from merit, the petitioner cannot become eligible for appointment.

It was specifically stated in Para 10 of the reply that

inquiry against respondent No.4 is still pending and explanations were sought from these employees and they were called for hearing on 04.12.2003. It is also stated that previously inormation regarding these employees as such has been called by the District Education Officer and he inquired about Sri Ranjeet Singh and ultimately states that even if these two persons were not given appointment, still the petitioner Ganeshi Lal cannot be appointed because he does not come within the merit. Along with this the report of Inquiry Officer cum Head Master, Government Upper Primary School, Kurud dated 06.11.2003 and subsequent notices issued to appellant on 07.11.2003 and 12.11.2003 were placed on record as Annexure R/13, R/14., and R/15 respectively.

From the affidavit it is clear that the next date for submission of explanation by the appellant was 04.12.2003 since the application has been moved earlier then the date fixed for hearing the subsequent proceedings or ultimate result of the enquiry were not brought on record.

This shows that veracity of certificate about participation was sought from school before giving appointment and it was confirmed that Mithu Singh S/o Chandan Singh did participate in the State Level Sports Competition.

It is at that stage when the matter was argued before the learned Single Judge the reference was made to the finding of the Inquiry Officer in the judgment under appeal, it was stated that:

> "Sh. Marudhar Mridul, Sr. Advocate assisted by Shir R.N.Upadhayay counsel for the respondents No. 3 and 4 accepts the position that the certificate produced **by the respondent No.4 was found forged on an inquiry**, as such he was not entitled for the bonus marks as awarded to him."

On reaching this conclusion, the learned Single Judge set aside the appointment offered to the present appellant with further direction that respondent while considering the candidature of the petitioner also consider the candidature of other persons if having merit marks more than the petitioner may be given appointment. The statement as such he was not entitled for bonus marks as awarded to him, in the context of facts noticed by us is referable to conclusion of learned Single Judge only.

Be that as it may, preliminary objection has been raised by learned counsel for the respondent that since the fact of document has been accepted on behalf of the present

appellant, therefore, he cannot be permitted to file an appeal and if he so desires he ought to have filed a review petition before the learned Single Judge.

It is true that as a matter of right a party could not have come before this Court to insist upon looking into the correctness of the record of proceedings as stated in judgment. For such a contention he could have approached the learned Single Judge by way of review.

But there is no impediment on the jurisdiction of appellate court to look into record and find about correctness about the subject matter and if satisfied about incorrect statement in judgment under appeal to accept the explanation in what circumstances the statement before the learned Single Judge was made. Infact learned counsel for appellant has not attempted to say that such statement was not made by the learned counsel but had tried to explain the impact and extent of such statement on the basis of existing material which he is otherwise entitled to do.

In the facts and circumstances of the case, as we shall presently notice, the statement made by learned counsel for the petitioner was not related to admission of fact that

document was found forged but was mere acceptance of fact about existence of enquiry report in which it was opined that certificate produced by appellant was forged. But unquationally apparently such inquiry was not completed at that time even as per the submission made by the respondent State. It was clearly stated in the affidavit as noticed by us above that the next date for calling the explanation from delinquent was 04.12.2003 and enquiry was likely to be completed thereafter only. Apparently, the foundation of the judgment under appeal could not be an incomplete inquiry or admission of finding recorded in enquiry report which is yet be examined by Competent Authority, empowered to pass appropriate order by reading its own finding in respect of enquiry report which was pending consideration of explanation, if any, to be submitted by the appellant.

These facts emerge from the record of writ petition itself and does not depend upon any further enquiry nor it is an after thought by the appellant but emerges from the reply submitted by the respondent State itself. It is rather unfortunate that this fact has been missed by the counsel appearing for the respondent No.4 as well as the Court and the judgment was totally founded on as opinion expressed in an unfinished inquiry, wherein candidate's explanation was yet to be

considered.

From the record of enquiry made available by learned Government counsel it further transpires that on 04.12.2003, the date fixed for submission of explanation vide notice Annexure R/15, the present appellant did furnish explanation which is inconsonance with the explanation furnish in appeal. Therefore, it also cannot be said that whatever has been stated in the memo of appeal is an after thought. Same submission was also made before the Inquiry Officer namely District Education Officer way back on 04.12.2003 and as per the record available with the learned Government counsel at least until 20.04.2005 the enquiry had not been completed for want of necessary information emanating from District Education Officer, Udaipur as was sought from the District Education Officer Rajsamand. DEO, Rajsamand has not at all responded.

In these circumstances, the appellant cannot be non-suited merely on the basis of preliminary objection raised by the learned counsel for the appellant.

Moreover, we find from the interim report submitted by the Head Master, Upper Seondary School, Kurud Annexure R/13 that the total opinion is that somehow the present

appellant has got the original certificate issued in favour of Mithu Singh S/o Mohan Singh and he has made alteration in certificate issued to Mithu Singh S/o Mohan Singh so as to use certificate issued in his favour. Suffice it to say that original certificate issued in favour of Mithu Singh S/o Mohan Singh has been submitted alongwith this appeal. Correctness of what has not been denied by any one. In these circumstances, it cannot, by any stretch of imagination, be said that certificate of Mithu Singh S/o Mohan Singh has been used by the present appellant by interpolating his father's name. Original certiicate issued in favour of Mithu Singh S/o Mohan Singh and the original certificate of Mithu Singh S/o Chandan Singh (the appellant) both have been produced along with special appeal, veracity of both of which have not been denied. The two certificates bear different Serial Nos. which justify our conclusion that the certificate submitted by the appellant before authority alongwith his application was not the certificate issued in favour of Mithu Singh S/o Mohan Singh, which could have been used by the appellant by interpolating.

Another glaring aspect which is apparent from the material before us is the endorsement made by the teacher and Principal of the School at Chhapali where the appellant was a student and about which also there is no dispute,

certifying that the appellant Mithu Singh S/o Chandan Singh has participated in the said sport event. This endorsement has not at all been taken into consideration by the enquiry officer.

The judgment under appeal which is founded on incomplete inquiry on the face of it suffers from such an omission of considering apparent facts on record cannot be sustained. We may notice that enquiry was not completed which is apparent from the return submitted by the education department which carried with it notices issued to the appellant calling upon him to explain the finding of enquiry officer and no final conclusion of ultimate authority was placed before the court.

In the whole scenario the statement of learned counsel for the appellant as it appears in the judgment under appeal cannot be considered more than the admission of fact about existence of enquiry report with opinion against the appellant. It cannot be considered in any sense admission of guilt of forging or about final results of enquiry, so as to base judgment only on that basis without considering the official record available on the record of Court.

In view thereof, we are of the opinion that the judgment under appeal cannot be sustained to the extent it directs the setting aside of the appointment given in favour of the appellant on the basis of incomplete and defective inquiry.

We cannot resist ourselves from making observation that it was a bounden duty of the State to have brought to the notice of the Court explicitly that the inquiry is still pending and when after submission of the reply in November 2003 further notices have been issued before decision on 26.05.2005 was rendered, further progress of the inquiry ought to have been brought to the notice of the Court. This has resulted in serious miscarriage of justice. At this juncture, however, we are not inclined to stultify the inquiry which is pending before the respondents and awaiting completion.

Accordingly, judgment under appeal is set aside. The order passed by the learned Single Judge setting aside appointment in favour of Mithu Singh S/o Chandan Singh is also set aside. Writ petition is dismissed. However, on completion of inquiry the respondents shall be free to take action in light of the final decision reached in the inquiry subject to the remedies that may be available to the aggrieved party that may be perused by him.

There shall be no orders as to costs.

[CHATRA RAM JAT], J. **[RAJESH BALIA], J.**

mamta